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Letter dated 21 June 2017 from the Permanent Representative the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the President of the Human Rights Council

I have the honour to attach herewith the response of the Government of the United Kingdom of Great Britain and Northern Ireland to the comments of the Government of the Republic of Mauritius in relation to the response of the United Kingdom to the statement made by the Republic of Mauritius at the universal periodic review on 4 May 2017 (see annex).

I would be grateful if the present letter and the annex thereto* could be circulated as a document of the thirty-sixth session of the Human Rights Council.

(*Signed*) Julian **Braithwaite**

Ambassador, Permanent Representative

* Reproduced as received, in the language of submission only.

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Annex to the letter dated 21 June 2017 from the Permanent Representative the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the President of the Human Rights Council

Response of the Government of the United Kingdom of Great Britain and Northern Ireland to the comments of the Government of the Republic of Mauritius in relation to the United Kingdom's response to the statement made by the Republic of Mauritius at the universal periodic review on 4 May 2017

The UK is clear about its sovereignty over the British Indian Ocean Territory (BIOT). The UK committed in 1965 to ceding the Chagos Archipelago to Mauritius when it is no longer required for defence purposes. This was an ancillary part of the agreements that finalised the independence and – by extension – the decolonisation of Mauritius. This was accepted by the Government of Mauritius for many years and the Chagos Archipelago/BIOT has not been considered by the UN General Assembly since the early 1970s, over 40 years ago. It is very clear, therefore, that this is a bilateral dispute.

The UK stands by its commitment regarding cession of BIOT when it is no longer needed for defence purposes. However, at present, BIOT is still required for defence purposes. It contributes significantly towards global security, and is central to efforts at countering regional threats – including those from terrorism and piracy – which directly support UN Security Council resolutions.

The UK has engaged in good faith in bilateral discussions. We have made concrete proposals on Mauritian involvement in the long-term environmental and scientific stewardship of BIOT and on defence cooperation. Across three bilateral meetings at official level, however, Mauritius refused to discuss substantively any UK offers unless the UK gave a date for transfer of sovereignty. For Mauritius to walk away so soon from bilateral talks and to seek to place in a multilateral context a clearly bilateral issue, which the UK has been working hard to resolve, is entirely inappropriate and should concern us all. UK efforts to bridge bilateral differences continue, and a meeting at Ministerial level was held in New York on 19 June but without a different result. We continue our efforts to resolve this bilaterally and urge all UN Member States to consider carefully the damage arising from this course of action for both individual States and the ICJ.

Mauritius has been lobbying on the basis of the United Nations Convention on the Law of the Sea (UNCLOS) Arbitral Tribunal award of 2015. Contrary to Mauritius's assertion, it is not correct to say the Tribunal considered that the Marine Protected Area (MPA) itself violates international law. Further, the MPA is internationally regarded for its environmental value. Until last year it was the largest contiguous MPA in the world and is highly valued by scientists as a global reference site for marine conservation in a heavily overfished ocean. It supports a raft of international policy aims including, directly, the UN's oceans agenda and Goal 14 of the Sustainable Development Goals – issues which are under serious discussion in New York this week at the Ocean Conference.

The UNCLOS Tribunal was very clear in its award: it found that the Tribunal lacked jurisdiction to consider Mauritius' claim that the UK was not the "coastal State" in respect of the Chagos Archipelago for the purposes of the Convention. It also found that it lacked jurisdiction to consider Mauritius's alternative claim that certain undertakings by the UK had endowed Mauritius with rights as a "coastal State" in respect of the Archipelago. The Tribunal held that the dispute between the parties concerned sovereignty over the Chagos

Archipelago, and that the Tribunal did not have jurisdiction to decide the matter. It also held that the UK did not have any improper motive in establishing the MPA. The Tribunal's Award in no way supports Mauritius's sovereignty claim, and Mauritius's attempts to rely on dissenting opinions of Tribunal members cannot change that fact.

However, the UK fully recognises and accepts the UNCLOS Tribunal's ruling that the UK ought to have consulted Mauritius more fully, given our historical commitments, including our commitment to cede the sovereignty of the Territory when it is no longer required for defence purposes, and Mauritius's acknowledged long-term interest in the stewardship of the Archipelago. The UK has engaged in a series of talks with Mauritius to implement the award, but Mauritius has unilaterally suspended discussions since their attention has moved to the ICJ.

Mauritius has requested a General Assembly plenary meeting to take action on a draft resolution requesting the International Court of Justice (ICJ) to give an advisory opinion regarding the Chagos Archipelago, which the United Kingdom administers as the British Indian Ocean Territory (BIOT). I am writing because this should concern every UN Member State, as it would set a dangerous precedent for international justice which will affect us all.

This meeting has been requested under the General Assembly's agenda item, "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965". That item was included in the 71st session agenda in September, but General Assembly discussions were delayed to give both sides the opportunity to engage meaningfully and constructively to reach a bilateral solution.

The ICJ was founded on the principle that contentious cases between two States can only be taken to the Court by those States, and that those States must have consented to the ICJ's jurisdiction. Neither the UK nor Mauritius have consented to disputes between them going to the ICJ. The General Assembly is being used as a back door route to the Court. This is not the purpose of the ICJ's advisory jurisdiction, and risks compromising the ICJ's effectiveness. It would be a dangerous precedent that risks many other bilateral disputes being brought to the General Assembly and to the ICJ via that route, without the consent of one of the parties. The consequences are not limited to the UK and Mauritius; this will affect all States as regards their own bilateral disputes.

It is disappointing that Mauritius has rejected bilateral talks, and our offers, so swiftly. It is even more concerning that it is asking the General Assembly to engage the ICJ's advisory jurisdiction in a bilateral dispute. This is not a multilateral matter.